

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0501
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER
OF
HILMAR CHEESE COMPANY, INC.
HILMAR WHEY, INC.
AND
KATHY AND DELTON NYMAN
CHEESE PROCESSING PLANT
MERCED COUNTY

This complaint for Administrative Civil Liability (Complaint) is issued by the Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Regional Board) to Hilmar Cheese Company, Inc.; Hilmar Whey, Inc.; Hilmar Cheese Company Properties Partnership; and Kathy and Delton Nyman, dba Delton Nyman's Farm (Collectively HCC or Discharger) pursuant to California Water Code section 13323. The proposed administrative civil liability is based on findings that HCC has violated Waste Discharge Requirements Order No. 97-206 (WDRs) and has discharged waste or has caused or permitted waste to be deposited where it is discharged into the waters of the state. Imposition of Administrative Civil Liability is authorized pursuant to California Water Code section 13350.

The Executive Officer of the Regional Board finds, with respect to the Discharger's acts and/or failures to act, the following:

1. The Discharger operates the subject Cheese Processing Plant (hereafter Plant) and discharges waste onto land and into groundwaters of the State one-half mile north of the unincorporated community of Hilmar.
2. WDRs Order No. 97-206 regulates the discharge of waste from the Plant and states, in Discharge Specification B.2, that "Effective 15 March 1999, the EC of the discharge shall not exceed 900 μ mhos/cm."
3. The Discharger conducted daily measurements to determine compliance with the EC effluent limit. Monthly discharger self-monitoring reports (SMRs) covering the period from 27 January 2002 through 30 November 2004 contain daily measurement of conductivity at 25°C (EC). The daily measurements exceeded 900 μ mhos/cm for 1,039 days. These SMRs document that the wastewater discharged averaged about 2,750 μ mhos/cm and ranged from 1,750 to 4,160 μ mhos/cm on a monthly basis during this period. Wastewater discharged that exceeds an EC of 900 μ mhos/cm violates Discharge Specification B.2. On those 1,039 days, HCC discharged 821,000,000 gallons of wastewater to land.
4. Monthly groundwater monitoring data from SMRs covering the period from 27 January 2002 through February 2004 show that groundwater in wells within the influence of HCC's wastewater discharge contain an EC ranging from 1,500 to 2,700 μ mhos/cm compared to a background groundwater quality of 510 μ mhos/cm (Cleanup and Abatement Order No. 5F-2004-0722).

Comparison of the data from HCC's groundwater well network as reported by HCC in the SMRs demonstrates that HCC discharged waste or deposited waste where it was discharged to waters of the state.

5. As shown and described in Findings 2 through 4, above, the Discharger has violated the WDRs and has discharged waste to waters of the state (groundwater) and/or has caused or permitted waste to be deposited where it is discharged to waters of the state (groundwater).

6. California Water Code section 13323(a) provides:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

7. California Water Code section 13350(a) provides:

Any person who . . . (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

8. California Water Code section 13350(e) provides in relevant part:

The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

- (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.
- (2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

9. California Water Code section 13350(j) provides:

Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

10. Pursuant to California Water Code section 13350(e)(1), the maximum liability for the discharges of waste with EC in excess of 900 μ mhos/cm for a total of 1,039 days is \$5,195,000.
11. Pursuant to California Water Code section 13350(e)(2), the maximum liability amount for the 821,000,000 gallons discharged with EC in excess of 900 μ mhos/cm is \$8.21 billion.

12. The issuance of this Complaint is an enforcement action taken by a regulatory agency and is exempt for the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.

HCC IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that Administrative Civil Liability be imposed in the amount of **\$4,000,000 (four million dollars)**, based upon the above findings and in consideration of the factors set forth in California Water Code section 13327.
2. A hearing will be scheduled within ninety days from the date of this complaint unless HCC agrees to waive the hearing and pay the **\$4,000,000** Administrative Civil Liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm the proposed Administrative Civil Liability, or whether to impose a different amount after consideration of evidence and the factors set forth in CWC Section 13327. The Regional Board may impose a greater amount not to exceed the maximum civil liability identified above.
4. HCC may waive the right to a hearing. If waiver of the hearing is intended, the Discharger must have an appropriate representative sign the waiver and return it with a certified check made payable to the *State Water Resources Control Board Cleanup and Abatement Account* in the amount of **\$4,000,000 (four million dollars)** to the Regional Board at 11020 Sun Center Drive, #200, Rancho Cordova, CA 95670-6114 by 26 February 2005, as set forth below.

ORIGINAL SIGNED

THOMAS R. PINKOS
Executive Officer

26 January 2005

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent of Hilmar Cheese Company (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2005- 0501 (hereinafter the "Complaint");
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of \$4,000,000 (four million dollars) by check, made payable to the "*State Water Resources Control Board Cleanup and Abatement Account.*" The check shall have written upon it the number of this Complaint (Administrative Civil Liability Complaint No. R5-2005-0501) and it and the signed waiver shall be mailed to the attention of Janice Tanaka, at the Regional Board office at 11020 Sun Center Drive, #200, Rancho Cordova, CA 95670-6114.
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement during the 30-day public comment period, which began on the date of the Complaint.
7. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)